

2011

New foreshore bill passed

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The controversial Marine and Coastal Area Bill, which replaces the Foreshore and Seabed Act 2004, has been passed in parliament.

The Act restores access to the courts to seek recognition of customary title, and guarantees the rights of all New Zealanders in the common marine and coastal area.

Attorney-General Christopher Finlayson said over the last two years it has become clear all parliamentary parties want to change the existing law to restore right of access to justice.

"The bill the House has passed this afternoon is a just and durable resolution to the issue, and recognises the rights of all New Zealanders in the common marine and coastal area," he said.

The Act ensures the common marine and coastal area cannot be sold off.

Finlayson said all New Zealanders will always be able to walk, swim, fish, sail, dive, surf, picnic or play at the beach. The Bill guarantees public access, fishing, navigation, and existing use rights.

Labour, Act and the Greens voted against the bill, which was passed 63 votes to 56.

A visibly upset Green Party co-leader Metiria Turei said she was distressed by the bill's passage.

"This is a very unjust outcome. It's the same outcome from 2004. The Maori Party have betrayed Maori voters and those who supported them in 2004," Turei told media.

"Maori will continue, as we have done for generations, to fight for justice for our land and our rights to be treated the same as other New Zealanders.

"This legislation is discriminatory. It's racist. They shouldn't have proceeded and the Maori Party should have voted it down

The Act Party's filibustering tactics to try and delay the bill were unsuccessful, only holding up proceedings by 25 minutes.

The party lodged 700 questions to the Speaker's office in an attempt to hold the bill over to next week's recess.

But the questions were postponed because most of the MPs were absent.

The Act restores the right to seek recognition of customary marine title in the common marine and coastal area through the courts. It sets out tests for proving customary marine title and also sets out the rights customary marine title holders may exercise, such as guardianship and development rights. The rights do not affect public access.

The Maori Affairs select committee reported the Bill back to Parliament on 9 February 2011 after considering it for five months. The Bill's second reading was delayed when Parliament was adjourned following the Canterbury earthquake. It passed its second reading on March 8.

The Act will come into force the day after it is given Royal Assent by the Governor-General.

Summary:

- Repeals the Foreshore and Seabed Act 2004.
- Applies to the area formerly known as the foreshore and seabed, which will be known in the future as the marine and coastal area.

coastal area.

- Creates a common space in the marine and coastal area (the common marine and coastal area) which allows the interest and rights of all New Zealanders in the marine and coastal area to be recognised in law.
- The common marine and coastal area has no fee simple title, and cannot be sold.
- Guarantees free public access in the common marine and coastal area.
- Does not affect existing private titles in the marine and coastal area.
- Guarantees and, in some cases, extends existing rights for navigation, ports, fishing and aquaculture.
- Provides for the customary interests and rights of Maori in the common marine and coastal area to be recognised.
- Provides tests for applicant groups to meet to demonstrate customary marine title in areas where they have had exclusive use and occupation since 1840 without substantial interruption.
- This recognition will include the right to go to the High Court (or negotiate an out-of-court settlement with the Crown) to seek customary marine title for areas with which groups such as iwi and hapu have a longstanding and exclusive history of use and occupation.
- Unlike private title, customary marine title will be subject to the right of public access and cannot be sold.
- Similar to private (fee simple) title, customary marine title gives rights to permit activities requiring a resource consent, some conservation activities, protection of wahi tapu, ownership of taonga tuturu found in that space, and ownership of no Crown minerals. It also gives the customary title holder the right to create a planning document setting out objectives and policies for the area.
- Groups such as iwi, hapu and whanau will also be able to gain recognition and protection for longstanding customary rights that continue to be exercised. Their association with the common marine and coastal area in their rohe will also be recognised through a right to participate in conservation processes, which formalises existing best practice in coastal management.

Background:

Following an agreement between the National Party and the Maori Party in November 2008, an independent Ministerial Review Panel undertook a nationwide consultation process in the first half of 2009 and concluded that:

- The Foreshore and Seabed Act 2004 failed to balance the interests of all New Zealanders in the foreshore and seabed, and
- Was discriminatory and unfair.

In March 2010 the government released a consultation document outlining its preferred solution. The Attorney-General consulted widely on this document, including 20 hui and public meetings, and meeting representatives of business, recreational, conservation and iwi groups.

The Bill is the result of the consultation processes extending over 18 months.

It was introduced into the House passed its first reading on September 15, 2010. After considering public submissions for five months, including three weeks of oral hearings, the Maori Affairs Select Committee reported the Bill back on February 9, 2011.

The Bill passed its second reading on March 8, 2011.

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